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S E C R E T SECTION 01 OF 03 BAGHDAD 003004

SIPDIS

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SUBJECT: ITG RELUCTANT TO CONSIDER LEGAL DETENTION
AUTHORITIES

Classified By: Classified by David C. Litt, Political-
Military Affairs Counselor, for Reasons 1.4 (b) and (d)

SUMMARY

1. (S) Iraqi participation and input improved at the third USG-ITG meeting to discuss legal authorities for the proposed transition of Coalition detention operations to the Iraqi government. Representatives from the Ministries of Human Rights, Interior, Justice, and Ministry of State for National Security joined TNA member Sharwan al-Waely in a spirited if unfocused discussion on detainee issues.

2. (S) All Iraqi participants were adamant that no legal authorities for Iraqi security detention exist today, and none showed interest in developing such authorities in the future. Discussion focused instead on the transfer of greater numbers of detainees to the Iraqi court system, and al-Waely's plan to introduce a shadow committee to "help" the Combined Review and Release Board (CRRB), which he views critically.

DEFINING THE PROBLEM

3. (S) Al-Waely's opening comments indicated he had been receptive to last week's briefing on the profile and threat level of the Coalition detainee population. In reviewing the issue for new members of the group, he accurately explained the roles of the CRRB and the Central Criminal Court of Iraq (CCCI), and noted that "both we and the Americans are afraid" of the consequences of releasing many detainees currently in custody.

4. (S) MoHR Prisons Director Saad Sultan echoed this assessment, telling the group that his extensive contacts with Coalition detainees (Sultan is a regular presence at Abu Ghraib) had convinced him that many were criminals who had committed serious crimes under the previous regime. "If the Iraqi people knew who these people were," he said, "they would come forward and complain against them".

5. (S) A discussion of the best means by which to identify court-worthy criminals amongst the security internee population ensued, with the MOI representative offering to check detainee names against files in the MOI criminal record department for past offenses, and several Iraqi participants suggesting that detainee names be publicly advertised in order to solicit legal complaints from the Iraqi public about past criminal acts.

6. (S) (Note: a number of these propositions may prove useful if they come to fruition; the collection of additional information on past criminal acts by detainees could, in theory, assist in the discovery of outstanding warrants. End note.)

LEGAL AUTHORITIES

7. (S) All Iraqi participants responded with a firm negative to Embassy counsel's inquiry as to whether they believed the Iraqi government currently possessed any rights to impose security detention. "If I find someone who has been in custody longer than twenty-four hours and has not seen a judge," said Sultan, "I tell MOI or MOJ to let him go".

8. (S) The Director General of the Ministry of National Security did note, as an aside, that in reality he often saw people who had been detained in Iraqi custody "for months" without appearing before a judge, but no one else commented on the issue of current Iraqi extra-judicial detention.

9. (S) When Embassy counsel raised the disposition of dangerous detainees in Coalition custody against whom

- for reasons of witness intimidation, sensitive intelligence, or other causes - court cases could not be brought, the group was unmoved. "If you have a case where you have no source, no evidence, no crime, no case, that person should be released," said Raad Alim, representing the Ministry of Justice.

CHANGING THE SUBJECT

¶10. (S) Pol-MilOff raised a hypothetical scenario, asking whether the in future, Iraqi Security Forces in the midst of a five-day fight against insurgents in an enemy-occupied town would be expected to choose between bringing a judge into the midst of the fighting to mount investigative hearings or releasing disarmed fighters twenty-four hours after their capture, into a live battle.

¶11. (S) Al-Waely ignored the scenario and quickly changed the subject. "Let us talk about a practical proposal", he said, outlining a plan to form another committee - and several sub-committees - to "extend" the work of the CRRB, which reviews detainee files and recommends release or continued detention. (Note: al-Waely has previously been vocal in his opinion that the CRRB recommends insufficient numbers of detainees for release.)

¶12. (Note: One Iraqi idea - to have the CRRB's Iraqi participants examine detainee files closely for missed evidence of relevant criminal offenses, given their greater familiarity with Iraqi idiom and law - was clearly productive, although already in practice at the CRRB.)

¶12. (S) An animated discussion followed among the Iraqi participants as to the proposed committee's scope. It is not clear that consensus was reached - the MOI representative proposed that detainee names be checked against criminal records, MoHR was intent upon publishing names to attract witnesses, and al-Waely announced that lists would be screened for former regime figures and "names that are innocent".

¶13. (S) Embassy counsel proposed at the close of the meeting that we return next week to the subject of Iraqi legal detention authorities for security detention; the Iraqi participants agreed politely, and said that they would also update Embassy and MNF-I representatives of the formation and progress of the new (and as yet unnamed) committee.

COMMENT

¶14. (S) Our Iraqi interlocutors are enthusiastic about increasing the proportion of detainees funneled into the criminal justice system, which they blame for a perceived backlog in prosecutions. (Enthusiasm for adequately funding and securing the court is less apparent.) Many of their proposals are practical and positive, and these will be developed as a priority.

¶15. (S) Our partners show little interest, however, in the consequences for internal Iraqi security of releasing large numbers of detainees who the Iraqi-majority CRRB has judged pose an imperative threat to security, but who the Iraqi courts are unable to charge. We will discuss these security concerns in detail next week, with a focus on real-world examples illustrating the gravity of the problem, but note that this disengagement is common across the ITG.

¶16. (S) Should al-Waely's conception of the newly-formed committee prevail, we expect it will function as a source of detainee release requests rather than a forum for discussion of legal and political issues raised by the proposed transfer of Coalition detention operations. We will need to monitor carefully its interaction with and influence on the current CRRB. Satterfield